INTERIOR BOARD OF INDIAN APPEALS

Oranna Bumgarner Felter v. Acting Western Regional Director,
Bureau of Indian Affairs

37 IBIA 247 (05/24/2002)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ORANNA BUMGARNER FELTER, Appellant	:	Order Affirming Decision
v.	:	
	:	Docket No. IBIA 01-156-A
ACTING WESTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	May 24, 2002

This is an appeal from an August 7, 2001, decision of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning claims made by Appellant Oranna Bumgarner Felter to rights in certain property of the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe). For the reasons discussed below, the Board affirms the Regional Director's decision.

During 2000 and 2001, Appellant wrote several letters to the Superintendent, Uintah and Ouray Agency, BIA, stating that she was a mixed-blood Ute and claiming rights in tribal property under the Ute Partition and Termination Act of 1954 (Partition Act), 25 U.S.C. §§ 677-677aa. 1/ The Superintendent wrote several letters in response, beginning on April 5, 2000, and extending through May 14, 2001. In his letters dated May 10, 2001, and May 14, 2001, he explicitly rejected Appellant's claims.

Appellant appealed the May 10, 2001, and May 14, 2001, letters to the Regional Director. In her notice of appeal, she stated that her appeal concerned her claims to an interest in 172,000 acres of range land and 85,000 acres of former oil shale reserve land. The Regional Director interpreted her appeal as also concerning a water rights issue she had raised before the Superintendent. On August 7, 2001, he rejected all of her arguments and affirmed the Superintendent's letters. Appellant then appealed to the Board.

1/ This statute provided for division of the assets of the Tribe between the Tribe's mixed-blood and full-blood members and for termination of the Federal trust relationship to mixed-blood members. The statute has been the subject of extensive litigation. See, e.g., Hackford v. Babbitt, 14 F.3d 1457 (10th Cir. 1994), and cases cited therein.

Before the Board, Appellant again states that her appeal concerns the range land and former oil shale reserve land. However, her arguments are rambling and diffuse and appear to touch on other subjects as well. Her basic premise seems to be that BIA has continuing authority and responsibility under the Partition Act and, in particular, a present obligation to provide her with shares in certain tribal property.

Appellant claims an interest in 172,000 acres of range land which was distributed to mixed-blood Utes under the Partition Act but which, for the most part, is now the property of the Tribe. 2/ She alleges that she was a minor in the early 1960's when the shares of mixed-blood minors were sold to the Tribe. She appears to suggest either that the sale was invalid or that it did not extinguish her undivided interest in the range land.

A detailed discussion of the events leading up to and surrounding the sale of the minors' shares may be found in Hackford v. First Security Bank of Utah, N.A., 521 F. Supp. 541 (D. Utah 1981) (Hackford). 3/ A very brief summary of the district court's recitation of facts is set out here:

The mixed-blood Utes received 172,000 acres of range land under the Partition Act. For the purpose of distributing that land to individuals, the mixed-blood group formed two corporations. Each mixed-blood individual surrendered his/her undivided interest in the range land for shares in the corporations. The Secretary of the Interior appointed the First Security Bank of Utah as trustee for the assets of mixed-blood minors and incompetents. 521 F. Supp. at 544. The Bank sold most of the shares of minors and incompetents to the Tribe. Id. at 552. Many mixed-blood adults also sold their shares to the Tribe and, by May 1963, the Tribe owned virtually all of the shares initially held by mixed-bloods. Id. at 559. 4/

The plaintiffs in Hackford, claiming to represent all mixed-bloods whose shares were sold to the Tribe, id. at 548-49, alleged securities violations and breach of trust. Their claims were rejected by the district court. The Tenth Circuit affirmed, and the Supreme Court denied certiorari.

The Superintendent and the Regional Director both cited Hackford for their conclusions that Appellant did not have a valid claim to an interest in the range land. The Board

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2/ See footnote 4 below.

3/ Aff'd, No. 81-1863, 1983 WL 20180 (10th Cir. Jan. 31, 1983), cert. denied, 464 U.S. 827 (1983).

4/ The Regional Director's decision states that the corporations were eventually dissolved and that most of the range land was conveyed to the United States in trust for the Tribe. Regional Director's Aug. 7, 2001, Decision at 1.

agrees that, after Hackford, there can be no doubt that the sale of the minors' shares to the Tribe was valid. Further, although Appellant attempts to distinguish between shares in the corporations and interests in the range land itself, it is clear from the decisions of both the district court and the court of appeals that the mixed-bloods surrendered their undivided interests in the range land in exchange for shares in the corporations. 521 F. Supp. at 544; 1983 WL 20180 at *1.

The Board affirms the Regional Director's conclusion that Appellant has no remaining interest in the range land.

Appellant also argues that BIA has a duty to provide her with a share of the former oil shale reserve lands which were deeded to the Tribe in December 2000 by the Secretary of Energy. Both the Superintendent and the Regional Director held that BIA had no authority over these lands because they were deeded to the Tribe in fee simple.

The lands to which Appellant refers are evidently the lands which were conveyed to the Tribe by section 3403 of the National Defense Authorization Act for Fiscal Year 2001, 5/ which amended section 3405 of the National Defense Authorization Act for Fiscal Year 1999. As amended, section 3405 provides:

> (b) CONVEYANCE.—(1) Except as provided in paragraph (2) and subsection (e), all right, title, and interest of the United States in and to all Federal lands within the exterior boundaries of [Oil Shale Reserve Numbered 2] (including surface and mineral rights) are hereby conveyed to the [Ute Indian Tribe of the Uintah and Ouray Reservation] in fee simple. The Secretary of Energy shall execute and file in the appropriate office a deed or other instrument effectuating the conveyance made by this section.
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> (c) CONDITIONS ON CONVEYANCE—
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> * * * * * * * *
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> (3) The land conveyed to the Tribe under subsection (b) shall not revert to the United States for management in trust status.

114 Stat. at 1654A-485.

5/ Act of Oct. 30, 2000, Pub. L. No. 106-398, 114 Stat. 1654.

Appellant contends that this land belonged to the Tribe originally and was taken by the United States in 1916. She further contends that, because the mixed-bloods were members of the Tribe in 1916, they now have rights under the Partition Act to receive shares in the land.

Whatever validity there may be to her theory (a subject on which the Board expresses no opinion), Appellant must pursue her cause elsewhere. Congress not only conveyed the land to the Tribe in fee simple but explicitly forbade any future trust acquisition of the land. Thus, absent further action by Congress, there is no possibility that BIA will ever have trust management authority over the land. Likewise, absent further action by Congress, there is no possibility that BIA will ever have authority to convey a share of the land to Appellant.

The Board affirms the Regional Director's conclusion that BIA has no authority over the former oil shale reserve land.

Appellant alludes briefly to water rights issues and refers specifically to a lawsuit filed in Federal district court in 1995, i.e., Ute Distribution Corp. v. Secretary of the Interior, Civil No. 2:95CV0376W (D. Utah). Although Appellant's argument is not entirely clear, she appears to be seeking a change in the litigating position of the Department in that case.

Pursuant to a remand from the district court in Ute Distribution Corp., the Assistant Secretary - Indian Affairs issued a final administrative decision on October 2, 1998, on the question of whether the Tribe's water rights were partitioned to mixed-bloods under the Partition Act. 6/ Following issuance of the Assistant Secretary's decision, the matter was returned to the district court and, as far as the Board is aware, is still pending there.

The Assistant Secretary's decision was final for the Department and therefore controls the Department's position in the Federal court litigation. The Board has no authority to review a decision of the Assistant Secretary unless the decision specifically grants a right of appeal to the Board or there is a regulation granting such a right. E.g., Sac & Fox Nation of Missouri v. Assistant Secretary - Indian Affairs, 37 IBIA 222 (2002), and cases cited therein. No such right was granted with respect to the Assistant Secretary's October 2, 1998, decision.

Further, the conduct of this litigation in Federal court is a matter within the control of the Department of Justice and the Solicitor's Office of this Department. See Oglala Sioux Tribe v. Aberdeen Area Director, 16 IBIA 201 (1988). The Board has no authority to direct the manner in which a lawsuit is litigated in Federal court, particularly where the administrative appeal in which such Board action is sought does not arise until many years after the lawsuit was filed.

6/ See Hackford v. Acting Phoenix Area Director, 33 IBIA 274 (1999).

The Board has no authority in this appeal to grant Appellant any relief with respect to her water rights issues.

Appellant also alludes to hunting and fishing issues. In particular, she appears to object to a February 19, 1998, decision issued by the Phoenix Area Director, BIA, 7/ and an October 5, 1998, decision issued by the Assistant Secretary, both concerning the management of hunting and fishing on the Uintah and Ouray Reservation. 8/

No hunting and fishing issues were addressed in the Regional Director's August 7, 2001, decision. Therefore, no such issues are properly a part of this appeal. In any event, the Assistant Secretary's October 5, 1998, decision is final for the Department. As stated above, absent specific authorization, the Board has no jurisdiction over matters decided by the Assistant Secretary.

The Board has no authority in this appeal to grant Appellant any relief with respect to her hunting and fishing issues.

The Board has considered Appellant's remaining arguments, to the extent it can understand them, but finds them unpersuasive.

Appellant has failed to show error in the Regional Director's August 7, 2001, decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's August 7, 2001, decision is affirmed.

//original signed	//original signed
Anita Vogt	Kathryn A. Lynn
Administrative Judge	Chief Administrative Judge

7/ "Phoenix Area Director" is the former title of the BIA official now known as the Western Regional Director.

8/ The Phoenix Area Director's Feb. 19, 1998, decision was appealed to the Board. The Assistant Secretary assumed jurisdiction over the appeal under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b) and thereafter issued his Oct. 5, 1998, decision.